

IBM Discovery II



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

TEK:CRE
60-235-38

November 27, 1973

Dr. Betsy Ancker-Johnson
Assistant Secretary for Science
and Technology
Department of Commerce
Washington, D. C. 20230

Re: U. S. v. International Business Machines
Corporation, 69 Civ. 200 (S.D.N.Y)

Dear Dr. Johnson:

On November 19, 1973 the Court entered the attached order which pursuant to Rule 34 of the Federal Rules of Civil Procedure directs various departments and agencies of the government to produce to IBM for inspection and copying documents as described therein that have relevance to electronic data processing. What documents your department or agency is required to produce depends upon whether it is listed on the A. or B. paragraphs of the order.

This notice is being sent to you in advance of the time that production is required so that your agency will be able to anticipate such production by appropriate action. Prior to that time the Department will contact you to assist you in complying with the Court's Order and will advise you in more detail what files must be produced and what procedures should be followed. Production will probably follow the order in which the agencies are listed in paragraph A. and B. We believe that the Court will require that a subsequent order that all documents be made available for inspection and copying can be completed by May 1, 1974.

DOJ review(s)
completed.

Rec'd Div. 300
NOV 30 1973

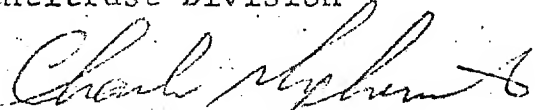
R-87

In order to facilitate the production at your department or agency we request that the attorney responsible for production advise us by letter as soon as convenient as to the earliest date when production to IBM can commence, where production will be made and approximately how much material is involved.

We also want to advise you that IBM has stated to the Court that it intends to take between 2 and 8 depositions of personnel at each agency (the number is probably dependent upon the agency's involvement in EDP procurement or evaluation). Where persons are specified in the Court Order, it is anticipated that those persons will be deposed by IBM as may others involved with EDP. An attorney from the Department will attend such depositions and will discuss procedures with the person to be deposed prior to the deposition. The times and locations of these depositions will insofar as possible be worked out to meet the convenience of the person to be deposed. Should you have any questions concerning this letter you may call the undersigned at 739(Code 187) 2492 or 2592, but it would be appreciated that the letter response requested above be made, prior to such call.

Sincerely yours,

THOMAS E. KAUPER
Assistant Attorney General
Antitrust Division



By: Charles R. Esherick
Attorney, Department of Justice

The court has ordered production of all documents relating to the bid, procurement, study, use, consideration or evaluation of EDP products or services, or of the suppliers thereof.

Documents requested are those dated from January 1, 1961 to December 31, 1972.

Documents include letters, memoranda, notes, routing slips; telephone, TWX and other messages; flip charts, drafts, summaries, accounting books and records, listings, brochures, directives, regulations, studies, analysis, diaries, reports, forms, proposals, transcripts, minutes, exhibits, and all other writings and reproductions, whether typed, handwritten, printed, copied in computer readable form, or otherwise, and whether contained in storage files, central files, project files, contract files, user files, policy files, personal files, desk files, chronological files or elsewhere.

Electronic Data Processing Product or Service includes data processing products which are capable of electronically entering, receiving, storing, classifying, computing, converting, controlling, displaying, or recording data, or which are interconnected with any such product; and maintenance, programming, management, integration, support, testing, consulting, feasibility studies, systems analyses, systems design and development or education services with respect to any such product or service.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

V.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

69 Civ. 200
(DNE)

PRETRIAL ORDER NO. 11

Defendant having filed a Request for Documents--
Set I on October 27, 1970, and the Court having entered
Pretrial Orders Nos. 2 and 3 on March 21, 1972, as amended
by Order dated May 10, 1972, and supplemented by Order
dated November 21, 1972, and Pretrial Order No. 2 on
March 26, 1973, and defendant desiring plaintiff to pro-
duce additional documents and plaintiff desiring to limit
such production and both parties desiring to expedite future
document production,

IT IS HEREBY ORDERED that, subject to the provisions of Pretrial Order No. 8, the procedures set forth herein shall apply to all document discovery hereafter taken by defendant of plaintiff.

David N. Edelstein
Chief Judge

November , 1973.

DOCUMENTS TO BE PRODUCED BY PLAINTIFF

In the interest of expedition, the parties have agreed to limit document production from Government agencies (other than that already in progress or that to be undertaken in connection with limited specific requests) to that described herein.

Document production within the terms of this order is divided into two groups.

A. The first group listed below consists of agencies where plaintiff is to produce all documents related to electronic data processing (i.e., all documents demanded in defendant's document demand which is Schedule 1 attached hereto with the exception of periodic records processed by electronic data processing equipment, the subject matter of which is not related to, electronic data processing).

AGENCIES** (AND PARTS OF AGENCIES) FROM
WHICH PLAINTIFF SHALL PRODUCE DOCUMENTS
CALLED FOR BY SCHEDULE 1

General Services Administration*

General Accounting Office***

Directorate of Data Automation of the Comptroller of the Air Force*

* Includes pre-1961 documents.

** Includes predecessor and successor organizations.

*** It is plaintiff's position that this agency must be subpoenaed. Plaintiff's counsel are attempting to obtain agreement from GAO to permit document discovery and inspection.

Army Management Information Systems Directorate

Army Computer Systems Support and Evaluation Command

Information Systems Division of the Chief of Naval Operations

Congressional Research Service of the Library of Congress***

Veterans Administration (Washington metropolitan area only)

Navy Tactical Automated Data Systems Office

Army Materiel Command (Headquarters only)

Defense Communications Agency

Assistant Secretary for Science and Technology; Assistant Secretary for Economic Affairs; Assistant Secretary for Domestic and International Affairs; and the Social and Economic Statistics Administration of the Department of Commerce (including Bureau of the Census and Office of Business Economics)*

U. S. Senate, Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary***

House of Representatives, Committee on Government Operations***

U. S. Congress, Joint Economic Committee, Subcommittee on Practices and Economy in Government***

Assistant Secretary of Defense (Comptroller) . . .

Assistant Secretary of the Army (Financial Management)

Environmental Protection Agency (Washington metropolitan area only)

Office of Science and Technology and Office of Telecommunications Policy of the Executive Office of the President

Federal Trade Commission (Washington metropolitan area only)

Federal Communications Commission (Washington metropolitan area only)

Department of Agriculture (Washington metropolitan area only)

Department of State (Washington metropolitan area only)

Assistant Secretary of the Navy (Financial Management)

Defense Intelligence Agency (Headquarters only)

*Includes pre-1961 documents.

**Includes predecessor and successor organizations.

***It is plaintiff's position that these entities must be subpoenaed. Counsel for the parties will attempt to obtain their agreement to permit document discovery and inspection.

B. The second group of agencies listed below consists of agencies where the parties have agreed to limit production under Schedule 1 hereto to:

a. EDP documents of the person or persons chiefly responsible for EDP procurements, operations or policy (it is recognized that sometimes this will consist of department documents as well as the person's personal documents* depending on the individual and the agency), and

b. EDP personal documents* of certain specifically designated persons (to the extent not produced pursuant to subparagraph a. above); such persons are designated by agency in the list of agencies from which plaintiff shall produce limited EDP documents, and

c. other documents relating to the bid, procurement, study, use, consideration or evaluation of EDP products or services, or of the suppliers thereof, and

d. other documents related to the extent, or lack of competition in, or the changing nature and structure of, the EDP industry or any part thereof.

* Personal documents include those EDP documents contained in such files as the desk files, day files, chronological files, correspondence files and subject files maintained by or for the person involved. *

AGENCIES** (AND PARTS OF AGENCIES) FROM
WHICH PLAINTIFF SHALL PRODUCE
LIMITED EUL DOCUMENTS

Electronic Systems Division of the Air Force Systems Command

Naval Ship Engineering Center (including personal files of D. L. Ream, R. L. Britton)

Johns Hopkins University, Applied Physics Laboratory (including personal files of L. N. McClung)

Lawrence Livermore Laboratory (AEC) (including personal files of S. Fernbach, H. Briujnes, R. Van Holdt, W. Marron, M. Harrison)*

U. S. Postal Service (Headquarters; Regional Postmaster General, New York; Regional Postmaster General, Western; and Main Post Office, New York only)***

George C. Marshall Space Flight Center (NASA) (including personal files of W. S. Davis, H. K. Weidner, G. E. Daniel, E. D. Geissler, F. B. Moore, H. Hoelzer, K. L. Heimborg, D. Grau, G. G. Buckner)

Space and Missile Systems Organization of the Air Force Systems Command

Naval Electronics Systems Command (including personal files of K. T. Shelley)

Social Security Administration (including personal files of G. Friedman, J. Faye, G. Sheya, S. Kreps, R. M. Ball, W. E. Hanna) (Headquarters organization, Baltimore, Maryland only)*

Langley Research Center (NASA) (including personal files of P. F. Fuhrmeister, E. M. Cortright, H. B. Edwards, A. G. Swanson, R. Conway)

Oak Ridge National Laboratory (AEC) (including personal files of H. P. Carter, J. G. Sullivan, Jr., C. L. Allen, B. E. Black)

Army Electronics Systems Command (including personal files of Gen. A. B. Crawford, Jr.) (Headquarters only)

Office of Naval Research and the Naval Research Laboratory (including personal files of A. B. Bligh, B. Wald)*

*Includes pre-1961 documents.

**Includes predecessor and successor organizations.

***It is plaintiff's position that this agency must be subpoenaed. Plaintiff's counsel are attempting to obtain agreement from U. S. Postal Service to permit document discovery and inspection.

Joint Chiefs of Staff

Air Force Deputy Chief of Staff, Research and Development

Bettis Atomic Power Laboratory (AEC) (including personal files of B. H. Mount, J. J. Taylor, C. H. Glover)

Knolls Atomic Power Laboratory (AEC) (including personal files of E. Reilly, R. Ehrlich, J. Leggiero)

Lyndon B. Johnson Space Center (NASA) (including personal files of H. W. Tindall, Jr., J. C. Stokes, Jr., R. P. Parten, J. P. Mayer, E. F. Kranz, D. K. Slayton, C. H. Woodling, P. A. Whitback, J. L. Neal, A. E. Garrison, P. L. Carroll, G. F. Bailey, J. V. Piland, R. B. Boyd, Jr., A. J. Calio, P. W. Gast, M. A. Fagel, R. A. Gardiner, W. C. Bradford, R. S. Sawyer, R. G. Chilton, B. D. Bennett)

Assistant Secretary for Administration and Management of the Department of Health, Education and Welfare (including personal files of L. Williams)

Assistant Secretary for Administration, and the Internal Revenue Service of the Department of the Treasury (Washington metropolitan area only)*

Ogden Air Materiel Area, Hill AFB

Air Force Aerospace Defense Command (Headquarters only)

Defense Supply Agency (including personal files of R. F. Babler) (Defense ADPE Reutilization Office only)

Naval Air Development Center (including personal files of H. G. Trembly)

Walter Reed Army Medical Center

Savannah River Plant (AEC) (including personal files of J. W. Wade, P. S. Tennant)

Air Force Deputy Chief of Staff, Programs and Resources (including personal files of Gen. Paschall, Gen. Gould, L. E. Berger) (Directorate of Command Control and Communications only)

Goddard Institute for Space Studies (NASA) (including personal files of R. Jastrow, A. Arking, J. A. Devries)

3-M Systems Branch of the Naval Materiel Command (including personal files of W. P. Emery)

Air Force Communications Service (Headquarters only)

*Includes pre-1961 documents.

Command Support Programs of the Chief of Naval Operations and the Navy Command Systems Support Activity (including personal files of C. P. Calo, J. E. Rebehn) (Assistant For Policy, Plans, Program and Budget; Intelligence Division; Fleet Readiness Liaison and Command Information Support Division; Reconnaissance Ocean Surveillance Division; and Command Control Support Division only)

Los Alamos Scientific Laboratory (AEC) (including personal files of B. G. Carlson, T. L. Jordan, E. A. Voorhees, W. J. Worlton, R. B. Lazarus, W. Wood)

Ames Research Center (NASA) (including personal files of H. M. Mark, C.A. Syvertson, L. G. Bright, T. R. Dines, M. W. Pirtle, L. Roberts, G. Goodwin)

U. S. Army Safeguard Systems Manager and the Safeguard Systems Command and Advanced Ballistic Missile Defense Agency

Air Force Data Automation Agency

Federal Aviation Administration

Jet Propulsion Laboratory (NASA) (including personal files of A. Finerman, J. P. Click, W. H. Bayley)

Naval Air Systems Command

Naval Ordnance Systems Command (including personal files of J. A. Ward)

Air Force Strategic Air Command (Headquarters only)

Eastern Test Range of the Air Force Systems Command (Headquarters only)

Air Force Cambridge Research Laboratory*

Headquarters, Air Force Systems Command

Naval Supply Systems Command*

Air Force Special Weapons Center

Arnold Engineering Center of the Air Force Systems Command

Rome Air Development Center of the Air Force Systems Command*

Armament Development and Test Center of the Air Force Systems Command

*Includes pre-1961 documents.

Air Force Logistics Command (Headquarters and Aerospace
Guidance and Meteorology Center only)

U. S. Army Corps of Engineers (Headquarters only)

Army Ballistic Research Laboratories (including personal
files of M. H. Weik, Jr.)

Army Tank/Automotive Command*

Air Force, Pacific Air Force**

Air Force Military Airlift Command**

Air Force North American Air Defense Command**

Army Aviation Systems Command**

Army Missile Command**

Army Mobility Equipment Command**

Army Munitions Command**

Army Test and Evaluation Command**

Army Weapons Command**

Army Safeguard Logistics Command**

Air Force Tactical Air Command**

*Includes pre-1961 documents.

**To be discovered only if necessary to supplement
defendant's discovery of the preceding agencies.

It is recognized by the parties that any attempt so to limit document production creates problems of definition. However, in the interest of expedition, the parties agree to use their best efforts to resolve those definitional problems. As is the present practice, prior to the commencement of document production to IBM at any agency listed in the second group below, a meeting between representatives of the Department of Justice, of IBM and of the agency involved shall take place at which the representatives of the agency and the Department of Justice shall identify the specific files which will be produced by the agency. Representatives of IBM and the Department of Justice shall then attempt to identify what further files or documents, if any, should be produced under the intent of the foregoing subparagraphs.

SCHEDULE 1

Definitions and Construction

In interpreting each paragraph of this Schedule, the following definitions shall apply:

Competitor/Competition: Competitor and competition include past, present and potential competitors and competition.

✓ Electronic Data Processing Product or Service: Electronic data processing product and service includes data processing products which are capable of electronically entering, receiving, storing, classifying, computing, converting, controlling, displaying, or recording data, or which are interconnected with any such product; and maintenance, programming, management, integration, support, testing, consulting, feasibility studies, systems analyses, systems design and development or education services with respect to any such product or service.

Supplier of Any Electronic Data Processing Product or Service: Supplier of any electronic data processing product or service includes each person, including plaintiff, which supplied or supplies or has offered to supply any electronic data processing product or service.

✓ Documents requested herein shall be those responsive documents which are dated, issued or published from January 1, 1961, to December 31, 1972.*

* Unless otherwise ordered by the Court, plaintiff shall not introduce at trial documents obtained from government agencies prepared after December 31, 1972, provided however, that the Government may use those documents prepared after such date which were prepared in connection with this litigation and which relate to events prior to December 31, 1972.

✓ Documents: Documents include letters, memoranda, notes, routing slips; telephone, TWX and other messages; flip charts, drafts, summaries, accounting books and records, listings, brochures, directives, regulations, studies, analysis, diaries, reports, forms, proposals, transcripts, minutes, exhibits, and all other writings and reproductions, whether typed, handwritten, printed, copied in computer readable form, or otherwise, and whether contained in storage files, central files, project files, contract files, user files, policy files, personal files, desk files, chronological files or elsewhere.

Documents to be Produced

1. The following documents concerning any supplier of any electronic data processing product or service:
 - a. documents relating to the relative strengths or weaknesses of a supplier in any aspect of the electronic data processing industry, or the relative growth, profits or position of a supplier in such industry;
 - b. documents relating to the history of any such supplier in any aspect of the electronic data processing industry, including its entry or exit into any aspect of that industry and any barriers, deterrents (or the lack thereof) to such entry or exit.
2. All documents relating to any electronic data processing product or service which relate to:
 - a. any evaluation thereof, including the history, life span, availability, performance or specifications thereof;

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b. any comparison involving or competition between any such product or service and any other product or service;

c. the number, kind or variety thereof available;

d. any substantial technological change in or cancellation or withdrawal of it.

3. All documents relating to the procurement or use of any electronic data processing product or service by any user including any governmental agency with respect to:

a. the organization, management, evaluation, selection, application, transfer or disposal of such product or service by such user;

b. the capacity or willingness, or lack thereof, of any such user to purchase or lease any such product or service from any supplier or to itself make, perform or supply any such product or service thereof instead of or in addition to its existing or then existing supplier;

c. the ability or capacity, or lack thereof, of any such user to use, evaluate or select, among, or to transfer or dispose of, any such product or service;

d. the prices, terms, or conditions for any electronic data processing product or service offered, negotiated, considered, sought, accepted or rejected by any such user.

4. All documents relating to any electronic data processing product or service or grouping thereof which show or tend to show the "market" or "segment" of commerce in which such products or services compete, including, but not limited to:

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a. the existence of a definable "market", "sub-market" or "part" of commerce in which such products or services compete;

b. the identity or nature of any product, service, supplier, purchaser or user therein;

c. the nature, extent or effectiveness of competition therein;

d. the relative or absolute position of any supplier therein;

e. any market power of any supplier of any electronic data processing product or service therein;

f. any acquisition or maintenance or any attempt or intent to acquire or maintain market power therein;

g. any possibility or probability that any supplier of any electronic data processing product or service might or may injure or destroy competition therein or acquire or maintain any market power therein;

h. any act, policy, practice, course of conduct, dealing or transaction which might accomplish or contribute to the injury or destruction of competition or the acquisition or maintenance of market power therein.

5. All documents which show any request or demand by any user, including any governmental agency, for prices or a pricing system whereby two or more electronic data processing products or services are included in a single price or are separately priced or are provided without charge.

6. All documents relating to any announcement by any supplier of a new electronic data processing product or service or a change or modification of a prior announced

electronic data processing product or service including:

- a. the time, timing or content of such announcement;
- b. any change in or cancellation of any electronic data processing product or service or any specification or capability thereof;
- c. the satisfaction or failure to satisfy any test or other standard;
- d. any manner in which such announcement was premature in terms of the design, development or availability of such product or service;
- e. any disclosure or discussion of such product or service or request therefor prior to such announcement.

7. All documents which show the percentage return (whether profit or loss) on investment or on revenue realized or anticipated by any supplier of any electronic data processing product or service on any such product or service or the relationship any such return has or has not to any average or standard of comparison or to the return on any other data processing product or service.

8. All documents which show any giving or offering by any supplier of any electronic data processing product or service of any price, product, service, term, condition, financing arrangement, or other consideration to any user which is not offered or otherwise made available to all users.

9. All documents relating to requests by the government to suppliers or potential suppliers for information on the present and future availability of electronic data processing products or services.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	x	
UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	69 Civ. 200
	:	
v.	:	(DNE)
	:	
INTERNATIONAL BUSINESS MACHINES	:	
CORPORATION,	:	
	:	
Defendant.	:	
-----	x	

PRETRIAL ORDER NO. 9

Defendant having filed a Request for Documents - Set I on October 27, 1970, and the Court having entered Pretrial Orders Nos. 2 and 3 on March 21, 1972, as amended by Order dated May 10, 1972, and supplemented by Order dated November 21, 1972, and counsel for the parties having agreed that in order to expedite documentary discovery, the parties will undertake an experimental program for the purpose of testing the feasibility of using government file indices to locate documents relevant to this action, and having further agreed that such experimental program shall constitute the next phase of document production and shall take the following form,

IT IS HEREBY ORDERED that

1. Defendant shall first designate the agencies where the file indices furnished in response to Pretrial Order No. 3 appear adequate for designation of the files defendant wishes to inspect. From among the agencies so designated, defendant shall supply a list of the agencies which have such apparently adequate file indices and, in s

doing, shall designate the locations within each such agency where defendant now wishes to take documentary discovery. The resulting list of agencies and location will comprise Schedule 1.

2. Plaintiff shall produce documents contained in the files for each agency found at each location of such agency listed in attached Schedule 1, as described in the designated portions of the file index for such agency heretofore furnished to plaintiff's attorneys, for the period January 1, 1961 to the date of production.

3. Following defendant's inspection of such files at the indicated agency and location, defendant may, within 30 days thereafter, serve a supplemental list of files and/or documents described in the designated portions of the file index of such agency and location, and such files and/or documents shall be produced by plaintiff promptly thereafter. Following defendant's inspection of such files, defendant may, within 30 days thereafter, serve a further supplemental list of files and/or documents described in the attached Schedule 2 if such files and/or documents were not contained in the files described in the aforementioned indices and shall be produced upon a sufficient showing that the existence or filing location of such files and/or documents had not been ascertained by counsel for defendant at the time of service of any prior list or which bear dates after the date of production referred to in paragraph 2, and such files and/or documents shall be produced by plaintiff promptly thereafter.

4. Plaintiff shall serve upon defendant not later than April 2, 1973, a list of all agencies which were

significantly involved in electronic data processing procurement, use, research or development at any time prior to January 1, 1961. Plaintiff and defendant shall promptly thereafter seek to reach agreement concerning practicable methods of conducting discovery of files and/or documents relating to electronic data processing which bear dates prior to January 1, 1961.

5. In order to determine the feasibility of deposing file personnel to ascertain the existence and location of files relevant to this action, plaintiff and defendant shall undertake a pilot program of such depositions. Pursuant to such program, plaintiff shall produce for deposition upon oral examination personnel who are in charge of the organization, management and/or maintenance of any files containing documents relating to electronic data processing maintained at each office and location specified in the attached Schedule 3, such depositions to be taken commencing 30 days after the date of entry of this Order. Such depositions shall not constitute evidentiary depositions for the agencies and offices involved and the taking of such depositions shall not foreclose defendant from taking such other depositions of such office or agency as it may be entitled to take.

6. The procedures hereinabove set forth concerning the next phase of document production and certain related depositions are experimental procedures designed to test the feasibility of using file indices to identify and locate files and documents relevant to this action. This attempt to use the index method of document discovery for the sample group of agencies listed on Schedule 1 shall

be without prejudice to the resumption of normal procedure. If as a result of defendant's participation in the experimental program hereinabove set forth, defendant determines that the use of file indices does not prove to be a satisfactory method of identifying and locating documents and/or files relevant to this action, defendant may at any time so notify plaintiff, abandon the program hereinabove contemplated and seek discovery of files and/or documents relevant to this action by any method it considers necessary or suitable to secure documents relevant to this action. If on the other hand the use of file indices does prove to be a satisfactory method then the test shall be over and further such indices shall be supplied and this procedure shall be utilized for document discovery.

7. Except as otherwise provided, the documents and listings described above shall be produced and made available for inspection and copying by counsel for defendant beginning not later than April 23, 1973.

/s/ David N. Edelstein
David N. Edelstein
Chief Judge

Dated: New York, New York
March 26, 1973

SCHEDULE 1

Assistant Secretary of the Air Force for
Financial Management

National Bureau of Standards

Pacific Missile Range, U.S. Navy

✓ U.S. Army Computer Systems Command, including
but not limited to, CSC Support Group at
Ft. Hood, Texas

White Sands Missile Range, U.S. Army

Office of Management and Budget

✓ U.S. Naval Electronics Laboratory

National Science Foundation

✓ Aeronautical Systems Division and Laboratories
of the Air Force Systems Command, Wright
Patterson Air Force, Ohio

Bonneville Power Administration, Dept. of
Interior

AEC

GSA Proc. Act

Naval

Goldman

Wright Pat.

Dr. Pugh

Nav. Dist. Lab. Act

Dr. McGowan

FBI

DOJ

Ship at Sea

OMB Aug 20

MF Sec. Sec.

Ft. Hood

Hawaii

SCHEDULE 2

Definitions and Construction

In interpreting each paragraph of this Schedule, the following definitions shall apply:

Competitor/Competition: Competitor and competition include past, present and potential competitors and competition.

Electronic Data Processing Product or Service: Electronic data processing product and service includes processing products which are capable of electronically entering, receiving, storing, classifying, computing, converting, controlling, displaying, or recording data, or which are interconnected with any such product; and maintenance, programming, management, integration, support, testing, consulting, feasibility studies, systems analysis, systems design and development or education services with respect to any such product or service.

Supplier of Any Electronic Data Processing Product or Service: Supplier of any electronic data processing product or service includes each person, including plaintiff, which supplied or supplies or has offered to supply any electronic data processing product or service.

Documents requested herein shall be those responsive documents which are dated, issued or published from January 1, 1961 to the date of production.

Documents: Documents include letters, memoranda, routing slips; telephone, TTX and other messages; flip charts, drafts, summaries, accounting books and records, listings, brochures, directives, regulations, studies,

analysis, diaries, reports, forms, proposals, transcripts, minutes, exhibits, and all other writings and reproductions, whether typed, handwritten, printed, copied in computer readable form, or otherwise, and whether contained in storage files, central files, project files, contract files, user files, policy files, personal files, desk files, chronological files or elsewhere.

Documents to be Produced

1. The following documents concerning any supplier of any electronic data processing product or service:

(a) documents relating to the relative strengths and weaknesses of a supplier in any aspect of the electronic data processing industry, or the relative growth, profits or position of a supplier in such industry;

(b) documents relating to the history of any such supplier in any aspect of the electronic data processing industry, including its entry or exit into any aspect of that industry and any barriers, deterrents (or the lack thereof) to such entry or exit.

2. All documents relating to any electronic data processing product or service which relate to:

(a) any evaluation thereof, including the history, life span, availability, performance or specifications thereof;

(b) any comparison involving or competition between any such product or service and any other product or service;

(c) the number, kind or variety thereof available

(d) any substantial technological change in or cancellation or withdrawal of it.

3. All documents relating to the procurement or use of any electronic data processing product or service by any user including any governmental agency with respect to:

(a) the organization, management, evaluation, selection, application, transfer or disposal of such product or service by such user;

(b) the capacity or willingness, or lack thereof of any such user to purchase or lease any such product or service from any supplier or to itself make, perform or supply any such product or service thereof instead of or in addition to its existing or then existing supplier;

(c) the ability or capacity, or lack thereof, of any such user to use, evaluate or select, among, or transfer or dispose of, any such product or service;

(d) the prices, terms, or conditions for any electronic data processing product or service offered, negotiated, considered, sought, accepted or rejected by any such user.

4. All documents relating to any electronic data processing product or service or grouping thereof which tend to show the "market" or "segment" of commerce in which such products or services compete, including, but not limited to:

(a) the existence of a definable "market," "sub-market" or "part" of commerce in which such products

or services compete;

(b) the identity or nature of any product, service, supplier, purchaser or user therein;

(c) the nature, extent or effectiveness of competition therein;

(d) the relative or absolute position of any supplier therein;

(e) any market power of any supplier of any electronic data processing product or service therein;

(f) any acquisition or maintenance or any attempt or intent to acquire or maintain market power therein;

(g) any possibility or probability that any supplier of any electronic data processing product or service might or may injure or destroy competition therein or acquire or maintain any market power therein;

(h) any act, policy, practice, course of conduct, dealing or transaction which might accomplish or contribute to the injury or destruction of competition, the acquisition or maintenance of market power therein;

5. All documents which show any request or demand by any user, including any governmental agency, for prices or pricing system whereby two or more electronic data processing products or services are included in a single price or are separately priced or are provided without charge.

6. All documents relating to any announcement by any supplier of a new electronic data processing product or service or a change or modification of a prior announced electronic data processing product or service including:

(a) the time, timing or content of such announcement;

(b) any change in or cancellation of any electronic data processing product or service or any specification or capability thereof;

(c) the satisfaction or failure to satisfy any test or other standard;

(d) any manner in which such announcement was premature in terms of the design, development or availability of such product or service;

(e) any disclosure or discussion of such product or service or request therefor prior to such announcement.

7. All documents which show the percentage return (whether profit or loss) on investment or on revenue realized or anticipated by any supplier of any electronic data processing product or service on any such product or service or the relationship any such return has or has not to any average or standard of comparison or to the return on any other data processing product or service.

8. All documents which show any giving or offering by any supplier of any electronic data processing product or service of any price, product, service, term, condition, financing arrangement, or other consideration to any user which is not offered or otherwise made available to all users.

9. All documents relating to requests by the government to suppliers or potential suppliers for information on the present and future availability of electronic data processing products or services.

SCHEDULE 3

NASA - Marshall Space Flight Center,
Huntsville, Alabama

Naval Ship Engineering Center,
Hyattsville, Maryland

General Accounting Office,
Procurement and Systems Acquisition Division